



europaan corporate governance institute

## Directors' Remuneration in Listed Companies

### Sweden\*

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# 1. General

**1.1 Please indicate, as a general reference, the laws, case law, regulations, exchange rules and best practices concerning directors' remuneration in your country with respect to listed companies. Please indicate where these provisions (such as, for example, exchange rules) apply only to domestically-incorporated companies.**

Sweden has a system between the one-tier and the two-tier board system. We have a board of directors, similar to the supervisory board, elected by the shareholders at the general meeting. The board of directors' main duties is to elect a Chief Executive Officer (CEO) and to decide on his remuneration, to supervise the CEO's running of the company and to take company strategic decisions when necessary. The CEO (and his team) is responsible for daily management of the company. According to the relevant listing rules applicable on the two Swedish regulated markets OMX Nordic Exchange Stockholm and NGM Equity (NGM AB, the stock exchange operating NGM Equity has lost its license and its markets must be dissolved by 31 March 2009) and the Swedish Corporate Governance Code, a majority of the board members must be independent from the company and its management, but only two board members need to be independent from the companies large owners (controlling more than 10 percent of the shares or votes). In addition, only one executive or employee can be a member of the board, which is usually the CEO. This means that the board of a Swedish listed company consists of non-executives, except for the CEO. These rules only apply to domestically-incorporated companies.

The Companies Act (Sw. Aktiebolagslagen) lays down the decision making process regarding remuneration to the board of directors and the CEO. The Annual Accounts Act (Sw. Årsredovisningslagen) demands some information about directors remuneration. The Companies Act and Annual Accounts Act apply to all companies limited by shares. The EC Recommendation on directors' remuneration has been implemented in Sweden through rules in the Companies Act and the Annual Accounts Act.

Companies that have their shares listed on a regulated market are in addition subject to a wide variety of rules. The listing agreements between the company and the stock exchange contain general and specific rules regarding information, including information requirements in relation to remuneration. Foreign companies listed in Sweden can and often get an exemption from these rules. The Swedish Corporate Governance Code, which from 1 July 2008 will be applicable to all, not only the largest, Swedish companies with shares listed on a regulated market, contain some minor rules on remuneration.

Share based compensation has a specific set of rules. Swedish listed companies often use new issues of shares or buy backs of existing shares as a part of an incentive scheme. After a company scandal in 1986, we have special rules regulating the decision making and some information aspects which are now part of the Companies Act. Decision making, information and also the material content of incentive schemes in listed companies are also regulated in the Corporate Governance Code and by the Securities Council (Sw. Aktiemarknadsnämnden). The Securities Council is a private self regulatory body with no sanctions except publicity at its disposal. However, according to the stock exchanges' listing agreements, the Exchange may sanction companies not adhering to statements from the Council. The Securities Council makes statements about listed companies behavior or planned actions in many respects, not only in relation to incentive schemes. In 2002, the Securities Council made a general statement summing up earlier decisions regarding incentive schemes, statement 2002:1 (an English version is available at [http://www.aktiemarknadsnamnden.se/2002/2002e1\\_\\_1186](http://www.aktiemarknadsnamnden.se/2002/2002e1__1186)).

**1.2 As to best practices, please specify whether they are described in either a private (voluntary or non-statutory) code or other official report, and whether a "comply or explain" principle is applicable to compliance with the relevant provisions by listed companies. Where the "comply or explain" principle applies, please indicate, where such evidence is available, whether companies generally comply with best practices.**

Best practices in relation to remuneration to directors and other executives are mainly laid down in binding rules in the Companies Act and the Annual Accounts Act. The Securities Council's statements, which to some extent define best practices regarding remuneration - at least incentive schemes - are also binding

through the listing agreement. It is only the rules, which have very little impact on remuneration issues, in the Swedish Corporate Governance Code that companies may explain themselves away from.

**1.3 Please describe in summary: the institutional structure for adopting executive remuneration rules or best practice codes; and any major proposals for reform concerning directors' remuneration.**

The only current proposal for reform of the Swedish rules on remuneration is to move the rules that require the General Meeting to decide upon principles for executive remuneration (i.e. rules corresponding to the EC Recommendation) from the Companies Act back to the Corporate Governance Code (where they were first introduced in 2005). However, the proposal is only preliminary and there are no decision taken on the matter.

## **2. Disclosure**

**2.1 Are listed companies required to publish a remuneration report, indicating the details of the compensation paid to the members of the Board of Directors? How often must it be published and where is it retrievable?**

No.

According to the Companies Act, the General Meeting of shareholders shall decide on all remuneration to the board of directors. The General Meeting shall also decide on principles for remuneration to the CEO and other top executives. The remuneration principles, shall be included in the Annual Report according to the Annual Accounts Act.

The total remuneration to each board member and to the CEO shall be reported on an individual basis in the Annual Report according to the Annual Accounts Act. Pensions and similar benefits, and any severance payment agreements, should also be reported on for these persons. The total remuneration to the board of directors, the CEO and other management shall be stated in the annual report (specified by country, if applicable), together with the number of persons that are included. Also the total cost for pensions and similar benefits for this group should be reported. The Annual Report is available on the company's website. According to the Companies Act and the Securities Council's statement 2002:1, any share based incentive program shall be reported on in the Annual Report. According to the Securities Council's statement 2002:1, the company should describe events and results during the most recent fiscal year for both new and old incentive programs, and it should give an overall view of all current programs. The Swedish Corporate Governance Code includes similar requirements.

According to the Swedish Corporate Governance Code, a company must give detailed information on its website regarding each outstanding incentive scheme. Additional information requirements can be found in the Securities Council's statement 2002:1. The information on the website shall not be older than seven days.

**2.2 Must these reports be submitted, or are recommended to be, to a Securities Market Regulator or to a public authority responsible for collecting these documents?**

No, except for the Annual Report that are registered with the Swedish Companies Registration Office.

**2.3 What information on directors' remuneration, individually and collectively, and on the remuneration committee, must be included, or is recommended to be included as best practice, in the financial reports? Please include in your answer any specific requirements which apply to particular elements of remuneration, such as stock options, bonuses, and termination payments.**

The total remuneration to each board member and to the CEO shall be reported on an individual basis in the Annual Report according to the Annual Accounts Act. Pensions and similar benefits, and any severance payment agreements, should also be reported on for these persons. The total remuneration to the board of directors, the CEO and other management shall be stated in the annual report (specified by country, if

applicable), together with the number of persons that are included. Also the total cost for pensions and similar benefits for this group should be reported.

According to the Companies Act and the Securities Council's statement 2002:1, any share based incentive program shall be reported on in the Annual Report. According to the Securities Council's statement 2002:1, the company should describe events and results during the most recent fiscal year for both new and old incentive programs, and it should give an overall view of all current programs. The Swedish Corporate Governance Code includes similar requirements.

#### **2.4 Is timely disclosure required with respect to stock options, their vesting, exercise, and the sale of the relevant shares to third parties?**

The listing agreement requires immediate disclosure of all non immaterial transactions between the company and the directors, which means that any incentive scheme must be disclosed. The Swedish rules generally require that the General Meeting approves of any share based incentive scheme, meaning that shareholders are informed of the matter before the General Meeting. If the stock option plan has been decided by the GM or has been made public, no information about vesting, exercise or sale is necessary in relation to the listing agreements. Some incentive schemes that are not share based, for example based on synthetic options, does not to be decided upon by the General Meeting. If the board introduces such a program, the board's decision must be disclosed immediately.

The Reporting Act (Sw. Lagen om anmälningsskyldighet) require directors' to report all trading in the company's shares to a register run by the Swedish Financial Supervisory Authority (Sw. Finansinspektionen). Vesting, exercise and sale of the relevant shares shall all be reported by the director. The register is publicly available on the Authority's website.

#### **2.5 What are the rules on disclosure of share transactions executed by the company's insiders (such as directors, officers, auditors, etc)?**

The Reporting Act (Sw. Lagen om anmälningsskyldighet) require directors' to report all trading in the company's shares to a register run by the Swedish Financial Supervisory Authority (Sw. Finansinspektionen). Vesting, exercise and sale of the relevant shares shall all be reported by the director. The register is publicly available on the Authority's website.

The general transaction disclosure rules in the Financial Instruments Trading Act (lagen om handel med finansiella instrument) may also demand disclosure to the market if the director, alone or with related parties, passes upwards or downwards a disclosure threshold (5, 10, 15, 20, 25, 30, 50, 2/3 and 90 percent of either shares or votes in any listed company). These rules apply to all shareholders in all listed companies.

#### **2.6 What information on directors' remuneration must be included in public offer prospectuses and listing particulars?**

Information can be found in Art. 15 in the EC Prospectus Regulation (809/2004/EG).

### **3. Remuneration of the Board of Directors**

#### **3.1 Who fixes the board of directors' remuneration? What are the relevant procedures? (In two-tier systems, please refer to the supervisory board.)**

The board's remuneration is decided by the Annual General Meeting with single majority, usually after a proposal from the largest shareholder or a nomination committee. Nomination committees is required in listed Swedish companies according to the Corporate Governance Code and are not comprised of members of the board but usually of representatives from the three to five largest owners of the company together with the chairman of the board.

According to the Companies Act, board remuneration must be decided upon for each member individually, and any variable remuneration (such as for board meeting attendance) must also be decided upon in advance by the AGM. Even if the CEO usually has a place on the board (as the only representative from management), he will not be given special remuneration for this work.

Incentive schemes for board members require GM approval. Board members (except for the CEO if he is a member of the board) may not take part in an incentive scheme for the employees or management – the scheme has to be exclusive for the board members. The proposal may not be prepared by the board or management. If the scheme involves a share issue or buy back of shares, a 9/10 majority of votes cast and share present at the GM is required, otherwise a single majority is sufficient. These means that incentive schemes to board directors is uncommon. Instead, many large owners require that the board members shall use part of its board remuneration, in many companies half of it, to acquire shares in the company on the market.

**3.2 Are there provisions and/or practices as to the amount of the remuneration and its distribution (for example, as to whether distribution should be proportionate) among board members? What types of remuneration are allowed?**

There are no such provisions and or practices. In general, the board remuneration to the chairman of the board is higher than to other board members.

**3.3 Are personal loans to the company's directors and officers allowed?**

The Companies Act contains a very complicated ban on loans to directors. These rules have their origin in Swedish tax law, but the simple answer is that loans to directors are forbidden.

## **4. Executive Directors' Remuneration**

**4.1 Who fixes the executive directors' remuneration? What are the relevant procedures? Are shareholders required to approve directors' remuneration, the remuneration policy, or the remuneration report (see question 2) on an annual or other basis? (In two-tier systems, please refer to the management board.)**

The Board decides upon the remuneration to the CEO, and the CEO decides upon remuneration to other person in management according to the Companies Act.

According to the Companies Act, the AGM shall decide upon remuneration principles for the CEO and the top management of the company. The principles are binding upon the board when they set remuneration for the CEO and on the CEO when he or she decides upon remuneration to management.

**4.2 Is the board required, or recommended as best practice, to create a remuneration committee?**

According to the Corporate Governance Code, boards in listed companies may set up a remuneration committee within the board, but the full board can handle remuneration matters if it feels that this is more effective (in that case, the CEO may not participate in the board's handling of these matters).

**If yes, please specify:**

**(i) the committee's composition (if independent directors should be appointed to this committee, please give the relevant definition and indicate whether any special procedures apply to the appointment of independent non-executive directors)**

If a remuneration committee is set up, its members shall be independent from the company and its management. The chairman of the board may chair the committee (even if he or she would be dependent).

**(ii) the committee's competences and which company body it reports to**

The committee only prepares remuneration matters to be decided upon by the full board.

**(iii) how the committee operates**

There are no special rules regarding its operations, these are to be determined by the board.

**4.3 Which types of remuneration are permitted? In answering, please consider each of the following:**

There are no restrictions on different types of remuneration, but the different types may demand different types of decision making, i.e. involving the GM. The remuneration must also be in line with the remuneration principles for the management set by the GM.

**(a) bonuses**

can be decided by the board;

**(b) stock options, including discounted stock options**

require a GM approval with simple majority. If it involves a new issue of shares, convertibles or warrants or a buy back of shares, a GM approval with a 9/10 majority of votes and shares present is required;

**(c) stock grants**

GM approval with a 9/10 majority;

**(d) profit sharing**

can be decided by the board;

**(e) benefits in kind**

can be decided by the board.

**4.4 Are there specific rules, including shareholder approval requirements, as to these different types of remuneration?**

See 4.3.

**4.5 Are there any restrictions on how payments are made?**

No.

**4.6 Are there any specific requirements for termination payments made on loss of office, whether through dismissal, retirement, on a takeover, or otherwise?**

No. Termination payment deals must be made public, see 2.3 above.

**4.7 Are there any specific requirements concerning directors' service contracts with respect to, for example, their duration and disclosure?**

No.

## **5. Non-executive Directors' Remuneration**

### **5.1 Are non-executive directors separately paid for their participation in committees of the board of directors? Do any restrictions apply to the payment of non-executive directors' *via* stock options?**

A Swedish company board is usually made up of nothing but non-executive directors, except for the CEO. They can be separately paid for their participation in committees if the GM so decides. A separate stock option scheme can be introduced for non executive directors, but this is highly uncommon. See 3.1 above.

### **5.2 May a company make payments to non-executive directors, additional to their directors' fees, for services, such as legal or brokerage services, outside the usual scope of directors' duties?**

Yes, but in these case this must be regulated by the remuneration principles to management (these principles shall also cover this type of remuneration). All remuneration and payments to directors must be disclosed in the Annual Report, see 2.3 above.